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TRINITY FINANCIAL SERVICES, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
JOHN BUTLER,
Debtor,

Case No. 2:18-bk-17409-WB

Chapter Number: 13

**SECURED CREDITOR TRINITY
FINANCIAL SERVICES, LLC'S
OBJECTION TO SECOND AMENDED
CHAPTER 13 PLAN**

**[CONTINUED CONFIRMATION
HEARING]**

**DATE: October 17, 2018
TIME: 11:00 a.m.
CTRM: 1375**

TRINITY FINANCIAL SERVICES, LLC ("Trinity") hereby objects (the "Objection") to confirmation of the Debtor's proposed Second Amended Chapter 13 Plan [Docket No. 39] (the "Plan") in the above-referenced matter. This Objection is based on the authorities cited herein and on such additional submissions and argument as may be presented at or before the confirmation hearing. In support of its Objection, Trinity respectfully states as follows:

1 **I. INTRODUCTION**

2 Trinity requests that the Court deny confirmation of the Debtor's Plan, as it fails to
3 commit the Debtor's disposable income, and also fails to provide for the correct amount of
4 payments to Trinity. For the reasons set forth herein, the Court should deny confirmation of the
5 Plan unless Debtor amends the Plan to provide for Trinity's claim correctly.

6 **II. STATEMENT OF FACTS**

7 1. Trinity's claim is evidenced by a Home Equity Credit Line Agreement and
8 Disclosure Statement executed by Debtor Ana Duran and dated November 21, 2005, in the
9 original principal sum of \$155,000.00 (the "HELOC"). A copy of the HELOC is attached to
10 Trinity's Proof of Claim [Claim No. 3-1 on the Court's Claims Register]..

11 2. The HELOC is secured by a second deed of trust (the "Deed of Trust")
12 encumbering the real property commonly known as 1171 East Claiborne Drive, Long Beach, CA
13 90807 (the "Property"). A copy of the Deed of Trust is attached to Trinity's Proof of Claim
14 [Claim No. 3-1 on the Court's Claims Register].

15 3. Subsequently, the Note was assigned to Trinity. Trinity, directly or through an
16 agent, is in possession of the original HELOC. A copy of the Assignments is attached to Trinity's
17 Proof of Claim [Claim No. 3-1 on the Court's Claims Register].

18 4. On July 11, 2018, the Debtor filed his original plan [Docket No. 12].

19 5. On July 24, 2018, Trinity filed its Proof of Claim secured by the Subject Property
20 with a total outstanding balance of \$218,866.60 and a pre-petition arrearage claim of \$81,674.82.
21 *See* CCR, Claim No. 3-1.

22 6. On July 30, 2018, Secured Creditor Deutsche Bank National Trust Company filed
23 its Objection to Confirmation of Chapter 13 Plan [Docket No. 21].

24 7. On August 1, 2018, the Chapter 13 Trustee filed an Objection to Confirmation of
25 Chapter 13 Plan [Docket No. 22].

26 8. On August 7, 2018, Trinity filed its Objection to Confirmation of Plan [Docket
27 No. 23 and Docket No. 24].

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9. On October 12, 2018, Debtor filed his untimely First Amended Chapter 13 Plan [Docket No. 38] in advance of the October 17, 2018 confirmation hearing.

10. On October 14, 2018, Debtor filed his untimely Second Amended Chapter 13 Plan [Docket No. 39] in advance of the October 17, 2018 confirmation hearing.

III. ARGUMENT

11. The provisions of 11 U.S.C. § 1325 set forth the requirements for the Court to confirm a Chapter 13 Plan. The burden is on the debtor to demonstrate that the plan meets the conditions essential for confirmation. *Warren v. Fidelity & Casualty Co. of N.Y. (In re Warren)*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988). For the reasons detailed herein, the Debtor fails to meet this burden.

A. The Plan Cannot Be Confirmed Because the Debtor Fails to Commit His Disposable Income

12. Debtor's Schedule I states that he is a sales manager with monthly take-home pay in the amount of \$4,333 [Docket No. 11]. However, the Debtor's own *Declaration by Debtor as to Whether Income Was Received from an Employer within 60 Days of the Petition Date* [Docket No. 15] states "I was not paid by an employer because I was either self-employed only, or not employed."

13. Trinity is in possession of the Debtor's checking account statements from 2017 due to the Debtor's previous application for a loan modification. The first page of one such checking account statement is attached as Exhibit 1 to Trinity's previous *Objection to Confirmation of the Plan* [Docket Nos. 23 and 29]. The Debtor's checking account shows the Debtor has take-home pay in the amount of \$4,956.16 every 28 days, or \$2,478.08 every two weeks.

14. Trinity notes that the trustee has also objected to the Plan on the basis of the Debtor's failure to prove income [Docket No. 22].

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1 **B. The Plan is Not Proposed in Good Faith**

2 15. The Debtor's checking account statement referred to above is titled to an entity
3 named Integra Financial Solutions, LLC ("Integra"). The residence shown on the account
4 statement is also the Debtor's. According to the Office of the Secretary of State of the State of
5 California, the Debtor signed Articles of Organization in favor of Integra in 2010. *See* Exhibit 2
6 to Trinity's *Objection to Confirmation of the Plan* [Docket No. 23, Docket No. 24, and Docket
7 No. 29]. The Debtor's entity was apparently still active as of 2017, yet the Debtor has not made
8 any disclosures as to this entity. The Court should deny confirmation of the Plan until creditors
9 have more information on the Debtor's business entity.

10 **IV. CONCLUSION.**

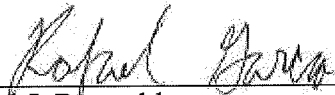
11 Based on the foregoing, Trinity respectfully requests that the Plan not be confirmed.

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13 Dated: October 31, 2018

Respectfully submitted,

14 BURKE, WILLIAMS & SORENSEN, LLP

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16
17 By: _____


Richard J. Reynolds
Rafael R. Garcia-Salgado
Attorneys for Creditor
TRINITY FINANCIAL SERVICES, LLC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Burke, Williams & Sorensen, LLP, 1851 East First Street, Suite 1550, Santa Ana, California 92705-4067

A true and correct copy of the foregoing document entitled (*specify*):

TRINITY FINANCIAL SERVICES, LLC'S OBJECTION TO SECOND AMENDED CHAPTER 13 PLAN

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **10/31/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Nancy K Curry (TR) TrusteeECFMail@gmail.com
- Sean C Ferry sferry@ecf.courtdrive.com, bkyecf@rasflaw.com
- Rafael R Garcia-Salgado rgarcia@bwslaw.com, bantle@bwslaw.com, rjr-nef@bwslaw.com, jgomez@bwslaw.com
- Kahlil J McAlpin kahlil24@aol.com, vanesa.guillen@yahoo.com
- Richard J Reynolds rreynolds@bwslaw.com, psoeffner@bwslaw.com, tmims@bwslaw.com, rjr-nef@bwslaw.com, fcabezas@bwslaw.com
- Valerie Smith claims@recoverycorp.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) **10/31/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor:

John Butler
1171 East Claiborne
Long Beach, CA 90807

Judge:

Honorable Julia W. Brand
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1382
Los Angeles, CA 90012

☐ Service information continued on attached page

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**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE
TRANSMISSION OR EMAIL** (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued
on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/31/18

Tahira Mims

Date

Printed Name



Signature